

No 34.
rent of lands,
holden by him
of the King,
will not be
impeded by
any base in-
feftment
granted by
the rebel, af-
ter his being
year and day
at the horn,
although it be
granted be-
fore obtaining
of declarator.

He who is infeft in an annualrent, thereafter taking infeftment of the pro-
perty of that same land, with provision, that the annualrent shall cease so
long as the property is effectual, if, thereafter, the property be evicted from
him absolutely, or be made unprofitable and ineffectual to him for a time, he
may have recourse to his infeftment of the annualrent, wherein he will not
be prejudged by acceptation of the infeftment of the property, in respect
of the provision of the contract.

Fol. Dic. v. 1. p. 554. Haddington, MS. No 2098.

No 35.
In an exhibi-
tion of writs,
the defender
alleged they
had been im-
pignorated.
Repelled on
account of de-
nunciation
and inhibition,
prior to the
impignora-
tion.

1626. December 21.

DUNDAS against STRANG.

SIR JAMES DUNDAS pursuing Mr William Strang for delivery of evidents;
the defender *alleging*, That the same was impignorated to him for some mo-
nies addebted by Borthwick of Newbyres, heritor of the lands, whereupon he
shewed the said Borthwick of Newbyres his obligation and letter, bearing the
hypothecation thereof; and, therefore, while he were paid of the sums ad-
debted to him, he *alleged*, That he ought not to deliver the writs. This al-
legeance was repelled, and the writs ordained to be delivered to the pursuer,
for two reasons, and *replies separatim, imo*, Because, that, before the debt,
Newbyres's debtor had sold the lands, whereof these were the evidents acclaim-
ed, by contract passed betwixt him and the pursuer, whereupon the pursuer
had both denounced Newbyres rebel, and served inhibition against him, both
before the bond made by him to the defender, and before the impignoration
of the writs; *2do*, Because the pursuer was infeft in the lands, and seased
therein, which, albeit it was after the impignoration, yet it carried with it
right to the evidents of the lands. But this last reply was not clearly admit-
ted, seeing the LORDS doubted, that the sasine after the impignoration would
have been preferred, if it had depended upon a contract made also after the
impignoration; but the first reply was enough *per se*.

Act. Aiton.

Alt. Lawtie.

Clerk, Gibson.

No 36.

Fol. Dic. v. 1. p. 555. Durie, p. 252.

1627. January 23. THOMAS LINDSAY against PORTEOUS & LO. YESTER.

ONE being denounced at the King's Horn cannot make disposition of any
thing *currente rebellione*, in prejudice of his superior or his donatar, if he hap-
pen to remain year and day rebel; no, not to any of his lawful creditors.

Fol. Dic. v. 1. p. 554. Spottiswood, (HORNINGS.) p. 148.

* * * Durie reports this case.

No 36

IN a special declarator, at the instance of James Wallace, donatar to the liferent of Thomas Porteous of Foord, who held the said lands of Foord of the Lord Yester, against the said Thomas, for payment to the pursuer of the mails and duties of the said lands, since the time that the said defender was year and day rebel; compeared in this process Thomas Lindsay, burgess of Edinburgh, and produced for his interest a charter and sasine of the said lands, granted to him by Thomas Porteous, with a declarator, recovered at his instance against the defender, whereby the tack, which was set by the said Thomas Lindsay to the said defender of the said lands, at the time of the purchasing of the said heritable right from the defender, was declared to be expired, for not payment of the tack-duty, conform to an irritant clause therein contained; in respect of the which right and possession of the lands really held by the said Thomas Lindsay, and which were purchased by him for a preceding cause, a just and true debt owing to him by the defender, and which he sicklike instantly instructed, for the satisfaction whereof he had acquired the right of the said lands, and possession conform thereto, therefore, he *alleged*, That the farms and duties of the said lands pertained to him, and ought not to be found to pertain to this donatar, in respect of the time of the acquiring of the said heritable right; and albeit the defender his author was then rebel, yet he was not then year and day rebel, whereby his liferent might fall to the superior; but it was then lawful to him to acquire a disposition of the heritable right of the lands from him, which he really did by charter, and sasine, and possession; and his subsequent rebellion, by his remaining year and day at the horn, ought not to be prejudicial to his said right, being made for a cause of debt owing to him, preceding the time that he was denounced at the horn. This allegiance was repelled, and the donatar of the liferent was preferred to the excipient; for the LORDS found, that the vassal being put to the horn, before the alienation, after that rebellion, (year and day being expired, and the vassal not relaxed,) he could do nothing to prejudice the superior in the liferent which was acquired to him, by the vassal's continuing and remaining rebel, unrelaxed year and day, during the time of the running whereof he could not, *medio tempore*, make any valid disposition, whereby the casualty of the subsequent liferent might be prejudged, (he not being relaxed at the time of the said alienation, nor at no time within year and day;) neither was it respected, that the infeftment was given for satisfying a debt, which preceded the rebellion, seeing it was only a personal obligation, and there was no obligation for giving of that real infeftment of the lands, whereupon the exception was proponed.

Act. Stuart.

Alt. Nicolson.

Clerk, Hay.

Durie, p. 260.